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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ELECTRIC POINTE, LLC, et al. Plaintiffs and Appellants, v. THE CALIFORNIA COASTAL COMMISSION, et al. Defendants and Respondents.	B211755 (Los Angeles County Super. Ct. No. SS014660)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jacqueline A. Connor, Judge. Affirmed.

Gates Eisenhart Dawson, James L. Dawson, Marc A. Eisenhart; Law Offices of Joseph E. Petrillo and Joseph E. Petrillo for Plaintiffs and Appellants.

Edmund G. Brown, Jr., Attorney General, John A. Saurenman, Assistant Attorney General, Jamee Jordan Patterson, Deputy Attorney General, for Defendant and Respondent California Coastal Commission.

Rockard J. Delgadillo, City Attorney, Susan D. Pfann, Assistant City Attorney, Timothy McWilliams, Deputy City Attorney, for Defendant and Respondent City of Los Angeles.

Paul J. Beard II, Damien M. Schiff for Pacific Legal Foundation as Amicus Curiae on behalf of Plaintiffs and Appellants.

Electric Pointe, LLC, and KLC, LLC appeal the judgment entered in favor of the California Coastal Commission (the "Commission") and the City of Los Angeles (the "City") in their petition for writ of administrative mandate. Appellants maintain that the trial court erred in its interpretation of the word "development" as it appears in section 30106 of the California Coastal Act (Pub. Res. Code, § 30106) (the "Act"). Finding no error, we affirm the judgment.

FACTS AND PROCEDURAL SUMMARY

Appellants own certain real property and improvements commonly known as 585, 589 and 595 Venice Boulevard in Los Angeles (the "Property"). The portion of the Property running under Venice Boulevard is part of the public right-of-way, subject to an easement for street purposes.

In the early 1990s, the City improved Venice Boulevard by, among other things, constructing a low wall in the middle of the easement, so that the public street (including a sidewalk, bicycle lane and traffic lanes) lay on one side of the wall, and a piece of land measuring approximately 25 feet wide by 480 feet (the "Burdened Property") lay on the other side. Both Venice Boulevard and the Burdened Property are subject to the City's easement.

Pursuant to the Venice Boulevard improvement plan, as a beautification measure, the City was to maintain landscaping on the Burdened Property. According to appellants, following the completion of the reconstruction of roadway, "the City failed to maintain the Burdened Property. Electric Pointe began to maintain the Burdened Property for additional off-street parking for its adjacent buildings. On May 29, 1997, Electric Pointe, pursuant to the Easement Vacation Law, Streets and Highways Code Section 8300 *et seq.*, submitted an application for the vacation of the easement on the Burdened Property. After the application was approved by the interested City departments, the City Council adopted an Ordinance of Intention (Ordinance No. 173257) on May 17, 2000, and declared its intent to vacate the easement once certain conditions were fulfilled. Electric Pointe fulfilled the conditions in 2001, but the vacation was not recorded despite the fact

that the recording of the vacation, once the conditions were fulfilled, was mandated by Streets and Highway Code Section 8336(a)."

In October 2003, the Commission staff informed the City that it believed that a Coastal Development Permit was required in connection with the vacation of the Easement. In August 2005, the Commission staff issued a report recommending that the Commission determine that a "substantial issue exist[ed] with respect to the City-approved project's conformance with the Chapter 3 policies of the Coastal Act because the vacation of part of the right-of-way could adversely affect coastal resources and public access to the shoreline . . ." and noted that no Commission-approved Coastal Development Permit had been issued. The City then acquiesced to the Commission staff's recommendation, added the requirement that appellants obtain a Coastal Development Permit as a condition to the vacation of the easement, and filed an application for such a permit. That application was denied in May 2006.

Appellants unsuccessfully appealed to the City's Bureau of Engineering, arguing that a Coastal Development Permit was not necessary to vacate an easement under the Easement Vacation Law; the City's Public Works Board affirmed the decision of the Bureau of Engineering.

On October 8, 2007, appellants appealed the decision of the Public Works Board to the Commission pursuant to the Commission's regulations and Public Resources Code section 30600.5. The Commission accepted the appeal as duly filed, but found that no substantial issue was raised by appellants' appeal, and upheld the decision of the Public Works Board.

Appellants filed a petition for writ of mandate on August 17, 2006, an amended petition on January 10, 2008, and a motion for peremptory writ of mandamus on April 15, 2008. Appellants maintained, as they had below, that the vacation of an easement is not a "development" as defined in the Coastal Act, because it is not a division of land. Consequently, appellants asserted, the Commission does not have permit jurisdiction over the vacation of the easement.

The motion was heard on July 28, 2008, and the notice of ruling upholding the Commission's decision was served the following day.

Appellants timely appealed.

DISCUSSION

Section 30600 of the Act provides in pertinent part: "(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit." (Pub. Res. Code, § 30600.) The parties agree that the Coastal Act's definition of "development" determines the scope of the Commission's permit jurisdiction. That is to say, if the proposed vacation of the easement constitutes a "development" within the meaning of section 30600, appellants must secure a permit from the Commission. The only dispute concerns whether or not vacation of an easement is a development.

Because this case turns on the meaning of the statutory definition of the term development, we state the rules governing statutory construction: "When we interpret the meaning of statutes, our fundamental task is to ascertain the aim and goal of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If we find no ambiguity, we presume that the lawmakers meant what they said, and the plain meaning of the language governs. [Citation.] If, on the other hand, the statutory language is unclear or ambiguous and permits more than one reasonable interpretation, we may consider various extrinsic aids to help us ascertain the lawmakers' intent, including legislative history, public policy, settled rules of statutory construction, and an examination of the evils to be remedied and the legislative scheme encompassing the statute in question. [Citation.] In such circumstances, we must select the construction that comports most closely with the aim and goal of the Legislature to promote rather than defeat the statute[']s general purpose and avoid an interpretation that would lead to

absurd and unintended consequences. [¶] When a provision of the Coastal Act is at issue, we are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations." (*McAllister v. California Coastal Com'n.* (2008) 169 Cal.App.4th 912, 928-929.)

Section 30106 of the Act defines the term development as follows: "'Development' means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal water; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). [¶] As used in this section, 'structure' includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." (Pub. Res. Code, § 30106.)

Relying on the plain meaning of the statute, the Commission points to the phrase "change in the density or intensity of use of land," posits that the vacation of the Easement will change the intensity of the use of the land by extinguishing the public's right to use the land as well as the City's obligation to landscape the Easement, and concludes that a permit is required in order for appellants to effect their plan of vacating the Easement. The Commission also cites the phrase "change in the intensity of use of water, or access thereto," notes that the Easement vacation would extinguish the public's

right to use the area for parking for beach access, and again asserts that the proposed cessation of the easement constitutes development under the Coastal Act.

Appellants do not dispute that the vacation of the Easement would change the intensity of use of the land. Rather, they rely on the doctrine of statutory interpretation known as *ejusdem generis* to reach a different conclusion concerning the meaning of the term "development." Appellants maintain that the Act's definition distinguishes between two distinct types of actions relative to real property: the physical actions of erecting structures, discharging water, moving dirt, and extracting materials; and non-physical "divisions of land." Under appellants' reading, the phrase "change in the density or intensity of use of land" is modified by the words which follows it: "including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits." As our Supreme Court explained in *People v. Giordano* (2007) 42 Cal.4th 644, "The doctrine of *ejusdem generis* provides 'that if the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be surplusage.' [Citation.] '*Ejusdem generis* applies whether specific words follow general words in a statute or vice versa. In either event, the general term or category is "restricted to those things that are similar to those which are enumerated specifically.' [Citations.]" (*Id*. at p. 660.) Thus, according to appellants, "If the legislature had intended that 'development' be defined the way that the Coastal Commission and the City contend, then the legislature would have ended Section 30106 with the phrase 'change in the intensity or density of use of land' instead of giving two examples, 'subdivision' and 'lot splits' of 'division of land.'" Applying the doctrine of *ejusdem generis*, appellants argue that a change in the density or intensity in the use of the land constitutes development under the Act only if that change in density or intensity of use is the result of a division of land, such as a subdivision, lot split, or the like.

Appellants find authority for this interpretation in several cases which found that certain non-physical changes to real property were in the nature of the enumerated

divisions of land included in the definition of development (that is, subdivisions and lot splits), and therefore were within the jurisdiction of the Commission. Thus, for example, in *California Coastal Com. v. Quanta Investment Corp*. (1980) 113 Cal.App.3d 579, after concluding that a stock cooperative conversion does not constitute a subdivision pursuant to the Subdivision Map Act, the court nevertheless found that it was a development under the Act, and thus subject to the Commission's permit jurisdiction, because it was a division of land which effected a change in the density or intensity of use of land. (*Id*. at p. 609.) Similarly, in *La Fe, Inc. v. Los Angeles County* (1999) 73 Cal.App.4th 231, this Court ruled that a lot line adjustment which did not create any new parcels was nevertheless a division of land similar to a subdivision or a lot split, and thus constituted a development within the meaning of section 30106 of the Coastal Act. (*Id*. at p. 240.)

The cited cases were concerned with whether certain actions (stock cooperative conversions, lot line adjustments) constituted divisions of land within the meaning of section 30106. The appellants in each of those cases argued that the subject actions were not divisions of land and therefore were not developments subject to the Commission's permit jurisdiction. Unlike the instant case, the court in the cited cases was not asked to, and did not, rule on whether the subject action would constitute development regardless of whether it was a division of land simply because it would result in a change in the density or intensity of use of land, or change in the intensity of use of water, or access thereto. An appellate opinion is not authority for a proposition not considered by the court. (*People v. Harris* (1989) 47 Cal.3d 1047, 1071; *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2.)

In *Stanson v. San Diego Coast Regional Com.* (1980) 101 Cal.App.3d 38, the owner of a two-story commercial building used as a supermarket wished to reconfigure the structure into 16 small retail shops and a second floor restaurant. The proposed remodel would maintain the same square footage as the original building. The San Diego Coast Regional Commission denied the landowner's permit application, and the landowner appealed, asserting, among other things, that the commission "lacked jurisdiction because the project did not constitute a 'development' within the applicable

sections of the Act." (*Id*. at p. 47.) The commission cited "increases in intensity of use resulting from increased automobile and pedestrian traffic" as the basis of its permit jurisdiction. Thus, the commission relied exclusively on the "change in intensity of use" language of the Act to assert its jurisdiction. The Court of Appeal agreed with the commission's reading of the statutory definition: "Such a broad interpretation is consistent with the legislative policy of the Act found in section 30001.5 and the broad grant of power to the agency to adopt any regulation or take any action it deems reasonable and necessary to carry out its provisions. (§ 30333.)" (*Ibid*.)

In response to *Stanson's* holding that a change in the density or intensity of use of land constitutes development within the meaning of section 30106 in the absence of a division of land, appellants note only that *Stanson* concerned "'physical action' while this case is simply a paper transaction for which a 'division of land' is necessary before it is a 'development.'" We are not persuaded. The parties in *Stanson* did not make the distinction between physical and non-physical activities with respect to real property which appellants rely on. Rather, the court was asked to decide if "change in the density or intensity of land," standing alone, came within the Coastal Act's definition of development. The court answered in the affirmative. We note as well that *Stanson* was decided in 1980. Thus, the Legislature has acceded to this interpretation of the statutory language.

Appellants' invocation of the doctrine of *ejusdem generis* is of no assistance. Appellants maintain that the statutory language "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, . . ." means "change in the density of intensity of use of land resulting from divisions of land, such as subdivisions and lot splits." If that is what the Legislature intended, it would have used that language. The only reasonable inference to be drawn from the fact that the Legislature added language *after* "change in the density or intensity of use of land" is that it was enumerating types of development which, in its estimation, *always* result in changes in the density or intensity of use of land.

Finally, we note that appellants' argument has no application to the statutory definition of development which includes "change in the intensity of use of water, or access thereto." Appellants do not challenge the Commission's position that eliminating public parking, which permits visitors to access the beach, ocean, and Venice canals, constitutes a change in the intensity of access to water. The Commission thus had permit jurisdiction on this basis alone, regardless of whether vacation of the Easement would effect a change in the density of intensity of use of land.

Amicus Curiae Pacific Legal Foundation, filed a brief in support of appellants, arguing that changes in the density or intensity of use of land or water can constitute development, as that term is defined in the Act, only if they are "long-lasting physical impacts on land that increase the intensity of its use." The Legislature did not define development as an *increase* in the intensity of land use, but as a *change* in intensity of land use. As noted above, we are constrained to follow the plain meaning of the statute "unless a literal interpretation would result in absurd consequences the Legislature did not intend." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.) Concluding that the Legislature meant what it said when it chose the word "change" instead of "increase" does not lead to an absurd result. We therefore decline to redefine development to mean increases, rather than changes, in the density or intensity of land use or of access to water.

Pacific Legal Foundation further argues that if this court affirms the Commission's interpretation of the statutory language, then the Commission may also require a permit of "A family planning a three-week family vacation away from their coastal home . . . because the home would remain uninhabited for an extended period of time and therefore affect the intensity of use of land;" "A business planning to shut its doors for the week-end . . . because the sudden absence of customer foot and car traffic would produce a change in the intensity of use of land;" a homeowner who sells a home to a family consisting of more or fewer people; a farmer who decides "to let one of his fields lie fallow . . . because the decision would involve a decrease in the intensity of use of land." We do not find the argument persuasive.

The Commission did not assert its jurisdiction over the sale or lease of real property or a change in the use of property by a landowner. If and when it does, the interested parties may challenge the Commission's authority to do so. Here, the Commission determined that its permit jurisdiction was invoked in connection with the vacation of the Easement because it would result in a change in the intensity of use of land and access to water. Appellants do not challenge the factual findings upon which that determination was made, but argue only that the statutory definition of development should be read to apply only to changes of intensity of land use resulting from divisions of land. Consequently, we determine, as did the trial court, that the Commission properly concluded that appellants' appeal to the Commission presented no substantial issue.

DISPOSITION

The judgment is affirmed.

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ARMSTRONG, J.

I concur:

TURNER, P. J.

MOSK, J., Concurring

I concur.

Petitioner contends that the principle of ejusdem generis should be applied to restrict the term "change in the density or intensity of use of land" in the Public Resources Code section 30106 definition of "development" to divisions of land or subdivisions. As Justice Baxter suggests in a concurring opinion, when the term "including, but not limited to" is used, as it was in section 30106, ejusdem generis would not seem to be applicable because the term should be construed as "expansive and flexible and the items following to be exemplary but not exclusive of the items covered by the statute." (*People v. Arias* (2008) 45 Cal.4th 169, 188-189 (Baxter, J. conc.).) But the Supreme Court applied the doctrine of ejusdem generis notwithstanding the use of "including, but not limited to." (*People v. Arias, supra,* 45 Cal.4th at pp. 180-181.) If the statutory interpretation tool of ejusdem generis is applied, "change in the density or intensity of use of land" should not, it would seem, include the vacating of an easement.

The argument of Amicus Curiae Pacific Legal Foundation is appealing. But, it does appear that the term "change in the intensity of use of water, or access thereto" could be a proper basis for the Commission's position. It seems to me that the effect of the vacating of the easement would not have much impact on the use of water or access thereto, but that is not my decision to make. "[T]he definition of 'development' in section 30106 has been broadly construed . . . ." (*Le Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, 242.)

The Commission takes the position that some of the hypothetical cases that may stem from this court's definition of "development" can be decided when and if they arise, and, under such a circumstance, the Commission can determine that a permit will be granted or whether the Commission has jurisdiction. Such a position is disquieting for

those involved with property who desire consistency. But how the statutory provisions operate generally is a matter for the Legislature. Because the Coastal Act is to be liberally construed to accomplish its purposes and objectives (Pub. Res. Code, § 30009; *Ojavan Investors v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 386), and the courts have broadly interpreted the term "development" (*Stanson v. San Diego Coast Regional Com.* (1980) 101 Cal.App.3d 38. 47; 2 Robie, et al., Cal. Civ. Prac. Environmental Litigation (2002) § 8:73, p. 107), I reluctantly concur in the affirmance of the trial court judgment.

MOSK, J.